

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST
LITIGATION

No. M 07-1827 SI
MDL No. 1827

This Order Relates To:

No. C 12-2214 SI

SONY ELECTRONICS INC.; SONY
COMPUTER ENTERTAINMENT AMERICA
LLC,

Plaintiffs,

v.

HANNSTAR DISPLAY CORP.,

Defendant.

**ORDER GRANTING HANNSTAR
DISPLAY CORPORATION'S MOTIONS
TO DISMISS AND STRIKE BREACH OF
CONTRACT AND FRAUD CLAIMS,
WITH LEAVE TO AMEND**

Currently before the Court is are motions by HannStar Display Corporation to dismiss and to strike the breach of contract and fraud claims of plaintiffs Sony Electronics Inc. and Sony Computer Entertainment America LLC (collectively, "Sony"). Pursuant to Civil Local Rule 7-1(b), the Court found these matters suitable for disposition without oral argument. Having considered the parties' papers, and for good cause appearing, the Court hereby GRANTS HannStar's motions, with leave to amend no later than September 7, 2012.

On May 2, 2012, Sony sued HannStar for the "antitrust injuries [it] sustained as a result of a long-running conspiracy to fix . . . raise prices . . . and limit the output of . . . [LCD panels]." Complaint at ¶ 1. Sony's complaint contains (1) a claim under the Sherman Act, based on direct purchases of LCD panels, (2) claims for damages under the California Cartwright Act and California Unfair Competition

1 law, (3) an unjust enrichment claim, and (4) claims for breach of contract and fraud. *Id.* at ¶¶ 147-178.

2 Sony's breach of contract and fraud claims are based on HannStar's alleged repudiation of a pre-
3 litigation settlement agreement. The agreement was allegedly reached after the parties engaged in
4 mediated discussions "for the purpose of resolving all LCD-related claims . . . without the necessity of
5 litigation" *Id.* at ¶ 166. Sony alleges that one month after both parties accepted the "Mediator's
6 Proposal" through which Sony "agreed to release HannStar from [its] LCD-related claims," *id.* at ¶ 168,
7 HannStar informed Sony that HannStar "would not pay the amount it had agreed to pay . . . and
8 repudiated the agreement." *Id.* at ¶ 171. Sony further alleges that HannStar's representations that it
9 would accept the agreement and pay the agreed amount were knowingly false, in that HannStar "never
10 intended to pay the amount in the Mediator's Proposal." *Id.* at ¶ 176. Sony alleges that had Sony
11 "known the representations were false, [Sony] would have not have agreed to settle their claims . . . and
12 would not have refrained from suing HannStar." *Id.* at ¶ 177.

13 HannStar first argues that Sony's breach of contract and fraud claims should be dismissed for
14 lack of subject matter jurisdiction. *See* Fed. R. Civ. Pro. 12(b)(1). However, the Court need not
15 consider whether subject matter jurisdiction exists because the parties concede that there is a basis for
16 diversity jurisdiction over the breach of contract and fraud claims.¹ *See* Motion at 6 ("The breach of
17 contract and fraud claims can be asserted in this Court only on the basis of diversity jurisdiction, should
18 SEL and SCEA seek to invoke the Court's diversity jurisdiction."); *id.* ("[Sony's] complaint
19 affirmatively shows that complete diversity exists."). Accordingly, the Court GRANTS HannStar's
20 motion to dismiss for lack of subject matter jurisdiction, but also GRANTS Sony leave to amend its
21 complaint to plead diversity jurisdiction.

22 HannStar asserts that even if the Court exercises diversity jurisdiction, there is "little likelihood
23

24 ¹HannStar disputes whether Sony could satisfy the requirement that a party invoking diversity
25 jurisdiction "specifically allege . . . that the amount in controversy exceeds \$75,000." *Bautista v. Pan*
26 *Am. World Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). Should Sony ultimately chose to invoke
27 diversity jurisdiction, the Court finds it premature to decide at the pleading stage the sufficiency of
28 Sony's allegations regarding the amount in controversy. *See, e.g., Usher v. City of Los Angeles*, 828
F.2d 556, 561 (9th Cir. 1987) (the court must assume that the plaintiff's allegations are true and must
draw all reasonable inferences in the plaintiff's favor). The Court notes that it is reasonable to infer that
the fees and costs Sony has accrued as a result of HannStar's alleged breach of the settlement agreement
could exceed the minimum amount in controversy.

1 that the breach of contract and fraud claims can be asserted.” Motion at 1. It argues that the allegations
 2 underlying those claims are “dependent on matters that are not subject to disclosure and not admissible
 3 under [California’s] mediation and confidentiality statutes.” *Id.* at 3; *see* Cal. Evid. Code §§ 1115-28.
 4 On this basis, HannStar contends that Sony’s allegations should be stricken under Rule 12(f); and, if the
 5 Court decides to strike them, Sony’s breach of contract and fraud claims should be dismissed. *See id.*
 6 at 10.

7 California mediation and confidentiality statutes (“confidentiality statutes”) forbid the discovery
 8 or admission of “evidence of anything said or any admission made for the purpose of, in the course of,
 9 or pursuant to, a mediation or mediation consultation,” *see* Cal. Evid. Code § 1119(a), which includes
 10 any “writing[s]” Cal. Evid. Code § 1119(b), or “communications,” Cal. Evid. Code § 1119(c). With
 11 diversity as the basis for jurisdiction over Sony’s breach of contract and fraud claims, the Court finds
 12 that state law would apply. *See* Fed. R. Evid. 501 (“[I]n a civil case, state law governs privilege
 13 regarding a claim or defense for which state law applies.”); *see also Pasadena Oil & Gas Wyoming LLC*
 14 *v. Montana Oil Properties Inc.*, 320 F. App’x 675, 677 (9 th Cir. 2009) (“State privilege law generally
 15 applies to state claims brought in federal court pursuant to diversity jurisdiction . . .”).²

16 However, these confidentiality statutes do not preclude Sony from pleading and pursuing its
 17 breach of contract and fraud claims. California Code of Evidence section 1123 provides certain
 18 exceptions to the protective prescriptions of the confidentiality statutes. One exception allows for the
 19 admissibility of a “written settlement agreement” when “[t]he agreement provides that it is enforceable
 20 or binding or words to that effect.” Cal. Evid. Code § 1123(b). Sony argues in its papers that a “written
 21 settlement agreement” was entered, consisting of emails from counsel accepting the mediator’s proposal.
 22 Opp’n at 11. The Complaint pleads almost as much, *see* Complaint at ¶ 167 (“On March 27, Prof. Green
 23 advised Plaintiffs and HannStar by e-mail that both parties had accepted his proposal that Plaintiffs’
 24 claims against HannStar were settled and resolved pursuant to the terms of his proposal as of that
 25 date.”), and presumably could be amended to include the contentions in Sony’s opposition papers. It

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 27 ²The Court disagrees with Sony that the confidentiality statutes do not create a “privilege” for
 28 these purposes. *See RegScan, Inc. v. Bureau of Nat’l Affairs, Inc.*, No. 1:11CV1129 (JCC/JFA), 2012
 WL 2994075 (E.D. Va. July 19, 2012) (The “guarantee of confidentiality of mediation materials and
 communications is a ‘privilege’ within the meaning of 501.”).

1 is thus possible that Sony can plead facts that, if proven, would bring the alleged settlement agreement
2 within the conditions to admissibility set forth in section in 1123(b). Accordingly, the Court GRANTS
3 HannStar's Rule 12(b)(1) motion, but also GRANTS Sony leave to amend its complaint to allege an
4 admissible and enforceable settlement agreement.

5 HannStar also argues that Sony's fraud allegations are too sparse to state a claim. The Court
6 agrees. "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be
7 stated with particularity." Fed. R. Civ. Pro. 9(b). "A pleading 'is sufficient under Rule 9(b) if it
8 identifies the circumstances constituting fraud so that the defendant can prepare an adequate answer
9 from the allegations.'" *Id.* (quoting *Gottrech v. San Francisco Investment Corp.*, 552 F.2d 866 (9th Cir.
10 1977). Under California law, "the 'indispensable elements of a fraud claim include a false
11 representation, knowledge of its falsity, intent to defraud, justifiable reliance, and damages.'" *Vess v.*
12 *Ciba-Geigy Corp.*, 317 F.3d 1097, 1105 (9th Cir. 1996) (internal citations omitted).

13 Sony's fraud claim is based largely upon the allegation that HannStar knowingly made a false
14 statement on or about March 27, 2012, when it communicated to Sony, "through outside counsel," that
15 it accepted the mediator's proposal. *See* Complaint at ¶¶ 175-177. However, Sony has not identified
16 with specificity who made the false representation or to whom that false representation was made. Nor
17 has Sony specifically alleged that the person who made the fraudulent representation had "knowledge
18 of its falsity." *See Vess*, 317 F.3d at 1105. An allegation of this sort based solely on "information and
19 belief" is insufficient to state a claim under Rule 9(b). Accordingly, HannStar's motion to dismiss
20 Sony's fraud claim under Rule 9(b) is GRANTED with leave to amend.

21 For the foregoing reasons and for good cause shown, the Court hereby GRANTS HannStar's
22 motions to dismiss, all with leave to amend. **Any amended complaint must be filed no later than**
23 **September 7, 2012.** Docket No. 16 in 12-2114; Master Docket No. 6060 in 07-1827.

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25 **IT IS SO ORDERED.**

26 Dated: August 27, 2012



SUSAN ILLSTON
United States District Judge